

AMENDED IN ASSEMBLY APRIL 18, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2838

Introduced by Assembly Member Hoge

February 22, 1996

An act to *amend Section 5495 of, to add Sections 5491.13, 5491.15, 5491.17, 5497.1, 5497.2, 5497.3, 5497.4, 5497.5, and 5497.6 to, to repeal and add Sections 5491.1—and 5497, 5497, 5498.2, and 5499 of, and to repeal Sections 5492—and 5493, 5493, and 5494 of, the Business and Professions Code, relating to outdoor advertising on-premises signs.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2838, as amended, Hoge. On-premises advertising: displays.

(1) Existing law provides for the removal, abatement, or limitation of on-premises advertising displays, as defined, and provides for the regulation thereof. Existing law imposes specified duties on local authorities relating to on-premises advertising.

This bill would substantially revise and recast those provisions and would thereby create a state-mandated local program by imposing additional duties upon local governmental agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the

creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5491.1 of the Business and
2 Professions Code is repealed.

3 SEC. 2. Section 5491.1 is added to the Business and
4 Professions Code, to read:

5 5491.1. (a) All cities or counties, *whether charter or*
6 *general law*, adopting, modifying, or amending any
7 ordinance or regulation made effective after December
8 31, 1987, which prohibits, requires abatement, regulates,
9 or controls on the basis of time, manner, location,
10 aesthetics, type, form, classification, height, or size, the
11 use of an on-premise advertising display shall include
12 provisions in that ordinance, regulation, modification, or
13 amendment for the inventorying, identification, and
14 abatement of existing illegal or abandoned advertising
15 displays within its territorial limits. Subsequent
16 annexations shall be made subject to compliance
17 herewith.

18 (b) The required inventory and identification shall
19 commence within 120 days from the date of adoption,
20 modification, or amendment ~~or~~ of any such ordinance
21 and be completed within 90 days of commencement.
22 Within 60 days after the 90th day has passed, the city or
23 county shall have commenced abatement of those
24 identified preexisting illegal or abandoned displays.
25 Abatement shall be completed of all such identified or
26 abandoned displays not later than 180 days following the
27 first date abatement commenced. For purposes of this

1 section, abatement is deemed at its latest to have
2 commenced on the 61st day following completion of the
3 inventory.

4 (c) Pending full completion of the inventory, and total
5 abatement of illegal or abandoned displays, the city or
6 county's former valid ordinance shall remain in full force
7 and effect. No newly adopted ordinance, nor
8 modification or amendment to any existing ordinance
9 shall have force or effect until the inventory and
10 abatement shall be fully completed and ~~Section 5491.13~~
11 *Sections 5491.13 and 5491.15* complied with.

12 SEC. 3. Section 5491.13 is added to the Business and
13 Professions Code, to read:

14 5491.13. Upon full compliance with the requirements
15 of Section 5491.1, every city or county at that time shall
16 be required to make and establish a new finding based on
17 then conditions of remaining legally in place on-premise
18 business displays within its boundaries that a new
19 ordinance, amendment, or modification to its former
20 ordinance is still required. It shall, in writing, provide all
21 valid reasons it finds still existing following such
22 abatements necessitating a continued reasonable
23 compelling need for that ordinance, amendment, or
24 modification. Without that reasonable compelling need
25 the *new* ordinance, amendment, or modification shall be
26 repealed.

27 SEC. 4. Section 5491.15 is added to the Business and
28 Professions Code, to read:

29 5491.15. In determining whether a display or sign is
30 illegal or abandoned, the city or county shall utilize the
31 ordinance in effect at the time the new ordinance,
32 amendment, or modification was adopted.

33 SEC. 5. Section 5491.17 is added to the Business and
34 Professions Code, to read:

35 5491.17. Should any city or county fail or refuse to fully
36 or timely comply with the requirements of Section 5491.1
37 or 5491.13 or with any local ordinance or regulation
38 imposing similar requirements as Section ~~4591.1~~ 5491.1,
39 each city or county shall be required to pay to any party
40 successfully or effectively causing the city or county's

1 compliance with either of those laws, its reasonable
2 attorney fees and costs of litigation as shall be fixed by any
3 court of competent jurisdiction.

4 SEC. 6. Section 5492 of the Business and Professions
5 Code is repealed.

6 SEC. 7. Section 5493 of the Business and Professions
7 Code is repealed.

8 SEC. 8. *Section 5494 of the Business and Professions*
9 *Code is repealed.*

10 ~~5494. The ordinances and regulations of any city or~~
11 ~~county, introduced or adopted prior to March 12, 1983,~~
12 ~~which have provided for amortization, and which make~~
13 ~~nonconforming any lawfully in place erected on premises~~
14 ~~advertising displays, shall not be subject to Section 5491.~~

15 ~~(a) All on-premises advertising displays which become~~
16 ~~nonconforming as a result of any such ordinance or~~
17 ~~regulation are presumed illegal once the amortization~~
18 ~~period provided by the ordinance or regulation~~
19 ~~rendering them nonconforming has lapsed and~~
20 ~~conformance has not been accomplished.~~

21 ~~(b) If property containing on-premises advertising~~
22 ~~displays is annexed to a city or county which introduced~~
23 ~~or adopted, prior to March 12, 1983, an ordinance~~
24 ~~regulating on-premises advertising displays, the city or~~
25 ~~county may apply its ordinance or regulation to the~~
26 ~~annexed property, and the display shall be deemed illegal~~
27 ~~upon expiration of any applicable amortization provided~~
28 ~~by such ordinance or regulation. The amortization period~~
29 ~~is deemed to commence in such event upon the date of~~
30 ~~annexation.~~

31 ~~(c) When amortization has not been provided in any~~
32 ~~applicable preexisting ordinance, annexed~~
33 ~~nonconforming displays ordered to conform to~~
34 ~~ordinances or regulations of any city or county shall be~~
35 ~~subject to the requirements of Section 5491.~~

36 ~~(d) Amendments or modifications to ordinances or~~
37 ~~regulations of any city or county adopted prior to March~~
38 ~~12, 1983, including amendments which require removal~~
39 ~~of additional displays or displays which had previously~~
40 ~~been made conforming, shall be subject to the~~

1 ~~requirements of Section 5491 if such amendment or~~
2 ~~modification makes the ordinance being amended or~~
3 ~~modified more restrictive or prohibitive.~~

4 ~~(e) Ordinances or regulations of any city or county~~
5 ~~introduced or adopted prior to March 12, 1983, which~~
6 ~~have terminated or will terminate, may be reenacted and~~
7 ~~are not subject to Section 5491 if reenacted within 12~~
8 ~~months of their termination, and if upon reenactment~~
9 ~~they are not made more restrictive or prohibitive than~~
10 ~~the preexisting ordinance or regulation.~~

11 *SEC. 9. Section 5495 of the Business and Professions*
12 *Code is amended to read:*

13 5495. A city or county whose ordinances or
14 regulations are introduced or adopted after March 12,
15 1983, and any amendments or modifications to those
16 ordinances and regulations, are not in violation of Section
17 5491 if the entity elects to require the removal without
18 compensation of any on-premise advertising display
19 which meets all of the following requirements:

20 (a) The display is located within an area shown as
21 residential or agricultural on a local general plan as of the
22 date the display was lawfully erected.

23 (b) The display is located within an area zoned for
24 residential or agricultural use on the date the display was
25 lawfully erected.

26 (c) The display is not required to be removed because
27 of an overlay zone, combining zone, special sign zone, or
28 any other special zoning district whose primary purpose
29 is the removal or control of advertising displays.

30 ~~(d) The display is allowed to remain in existence after~~
31 ~~March 12, 1983, for a period of 15 years from the date of~~
32 ~~adoption of the ordinance or regulation. For purposes of~~
33 ~~this section, every sign has a useful life of 15 years. Fair~~
34 ~~and just compensation for signs required to be removed~~
35 ~~during the 15-year period and before the amortization~~
36 ~~period has lapsed shall be entitled to fair and just~~
37 ~~compensation which is equal to 1/15 of the duplication~~
38 ~~cost of construction of the display being removed~~
39 ~~multiplied by the number of years of useful life remaining~~
40 ~~for the sign as determined by this section.~~

1 SEC. 10. Section 5497 of the Business and Professions
2 Code is repealed.

3 ~~SEC. 9.~~

4 SEC. 11. Section 5497 is added to the Business and
5 Professions Code, to read:

6 5497. (a) Notwithstanding any other provision of this
7 chapter, or any other law, ordinance, or regulation, no
8 on-premise business advertising or identifying display or
9 sign which was lawfully erected anywhere in this state
10 shall be compelled to be removed, nor shall its customary
11 maintenance, repair, or use be limited, whether or not
12 the removal or limitation is pursuant to, or because of, this
13 chapter or any other law, ordinance, or regulation of any
14 government entity or agency, without first payment of
15 compensation as defined in the Eminent Domain Law
16 (Title 7 (commencing with Section 1230.010) of Part 3 of
17 the Code of Civil Procedure), except as provided by
18 Section 5491.1, 5495, or 5499 *when affecting illegal or*
19 *abandoned signage.*

20 (b) Fair and just compensation shall be paid to the
21 owner of the advertising display or sign, and where
22 applicable, to the owner of the land upon which the
23 display is located. It shall also be paid, where appropriate,
24 to the lessee user of the display or sign. Neither the age
25 of the display or sign nor its initial declared value, *its*
26 *depreciated tax, or other basis* shall be a factor in
27 determining the amount of compensation payable upon
28 removal.

29 (c) This section shall apply to all displays or signs other
30 than billboards (off-premises advertising displays as
31 defined or found in Chapter 2 (commencing with Section
32 5200) of Division 3), which were lawfully erected in
33 compliance with state laws and validly existing local
34 ordinances in effect when the display or sign was erected
35 regardless of whether the display or sign has become
36 nonconforming or has been provided an amortization
37 period. *The Legislature finds that the subject matter of*
38 *this section represents a matter of statewide concern;*
39 *therefore, this section, along with Sections 5498.2 and*
40 *5499, shall apply to all cities and counties in this state,*

1 *whether charter or general law.* This section shall apply
2 to all cities and counties in this state whether charter or
3 general lawed.

4 (d) Notwithstanding the provisions of this section for
5 any city or county incorporated after January 1, 1997, an
6 ordinance initially adopted within two years of
7 incorporation, or any amendment thereto within that
8 two-year period, may require removal without monetary
9 compensation except that no removal without such
10 compensation may be demanded to occur within 15 years
11 from the effective date of the ordinance or any
12 amendment thereto, whichever is later. Any amendment
13 to the initial ordinance to which this exception shall apply
14 shall reset the commencement date for the beginning of
15 the 15-year period from the date of effectiveness of the
16 amendment. *The adoption of an existing county*
17 *ordinance by a newly incorporated city that contains an*
18 *amortization period for abatement shall not add to, or*
19 *subtract from, the time provided as amortization in any*
20 *local ordinance subsequently adopted that is intended to*
21 *supersede the initial county ordinance first adopted by*
22 *that city.* At the lapse of said two-year period, Section
23 5497 shall apply to all subsequently adopted ordinances,
24 amendments, or regulations which apply directly or
25 indirectly to the prohibition, or restriction on use,
26 continued use, repair, maintenance, location, relocation,
27 manner, form, height, size, type, classification, *color*,
28 construction, or erection of on-premise business displays
29 or signs.

30 ~~SEC. 10.~~

31 *SEC. 12.* Section 5497.1 is added to the Business and
32 Professions Code, to read:

33 ~~5497.1. Prior to any litigation commenced by any city~~
34 ~~or county to compel removal of nonconforming~~
35 ~~advertising displays or signs, as provided in Section 5479,~~
36 ~~the city or county shall submit to the owner, owners,~~
37 ~~landowner, and where applicable, the lessee of such~~
38 ~~display or sign, its reasonable and fair determination of~~
39 ~~value to the party of the display or sign and seek to~~
40 ~~negotiate with the party accordingly. If negotiations are~~

~~1 unsuccessful within a 60-day period from its
2 commencement, either party may judicially commence
3 civil proceedings to compel removal and determine fair~~

*5497.1. Prior to any litigation for the removal of any
on-premises, nonconforming business advertising
displays or signs, except for signs initially constructed
without proper permit and final approval, or abandoned,
all cities and counties shall submit, in writing, to the
display or sign owner, or landowner, and, where
applicable, to the lessee of the sign or display, its good
faith, reasonable and fair determination of value for the
exclusive purpose of negotiating a resolution of value to
avoid litigation. The submission of the fair determination
of value shall not be admissible into evidence if judicial or
administrative proceedings are later commenced.*

*If negotiations fail to produce a resolution satisfactory
to all affected parties within 60 days from the initial date
of submission, any party, without necessity for inclusion
of those satisfied parties, may judicially commence civil
proceedings to determine the fair and just compensation
payable pursuant to Title 7 (commencing with Section
1230.010) of Part 3 of the Code of Civil Procedure.*

~~SEC. 11.~~

*SEC. 13. Section 5497.2 is added to the Business and
Professions Code, to read:*

~~5497.2. For purposes of Sections 5491 and 5497, in
determining fair market value for payment of fair and just
compensation, uniform standard professional appraisal
practice methods shall be used. Without limitation, there
shall be included in the determination the damages
reasonably attendant to the user, owner, and landowner
from net revenues derived from sales or services; income
loss from rental; net losses to future business occasioned
by utilizing conforming signage; actual cost of removal;
actual cost to repair the property; actual cost to duplicate
or replace removed signage with conforming signage, as
of the date formal written notice requiring removal for
nonconformance was properly given by the
governmental body requiring conformance or removal.~~

~~SEC. 12.~~ *determining value for payment of fair and just compensation, recognized and reasonable professional real property appraisal methods shall be used. Signage for purpose of this section shall be deemed an accessory land use. Without limitation, there shall be included in that determination the losses reasonable attendant to the user, owner, and landowner from net revenues derived from sales or services; net income loss from rental of the signage to third persons; net losses to future business when established with reasonable certainty, or fairly anticipated in using conforming signage instead of existing signage; actual cost of removal; actual cost to repair the land upon removal; actual cost to duplicate or replace removed signage with conforming signage, whichever is less, as of the date the sign or display was physically removed or modified to conform; actual cost to bring the sign or display into conformance if the owner or user chooses to do so, and any other damages measurable at law. Diminution in land value shall not be considered. No measure of fair or just compensation payable shall be duplicated.*

SEC. 14. Section 5497.3 is added to the Business and Professions Code, to read:

5497.3. Displays located within unincorporated areas shown as agricultural on a local general plan, as of either the date an ordinance or regulation ~~is enacted or becomes applicable~~ *becomes enforceable* to the area and the display, is allowed to remain in existence for a term of at least 15 years after the adoption or amendment of ~~any~~ *that* ordinance or regulation necessitating a conformance with the ordinance or regulation are not in violation of Section 5497 or 5491.

~~SEC. 13.~~

SEC. 15. Section 5497.4 is added to the Business and Professions Code, to read:

5497.4. ~~Displays~~ *Subject to Section 5491.1, displays* lawfully erected anywhere in this state, but whose use has ceased or the structure upon which the display has been situate has been abandoned by its owner for a period of not less than 90 consecutive days may be removed

1 without payment required under Section 5497, unless a
2 new owner of the display ~~commences a use thereof~~
3 ~~applies for a permit to the same use~~ within 45 days
4 following the lapse of the 90th day. Cost of abatement for
5 such abandoned sign shall be chargeable to the owner of
6 the sign who shall have abandoned same. *The permit shall*
7 *not be denied or granted upon a condition in violation of*
8 *Section 5498.2.*

9 ~~SEC. 14.~~

10 *SEC. 16.* Section 5497.5 is added to the Business and
11 Professions Code, to read:

12 5497.5. Displays erected without first complying with
13 all valid applicable ordinances and regulations in effect at
14 the time of construction or erection may be abated
15 without compliance with Section 5497.

16 ~~SEC. 15.~~

17 *SEC. 17.* Section 5497.6 is added to the Business and
18 Professions Code, to read:

19 ~~5497.6. Displays required to be removed pursuant to~~
20 ~~the provision of Section 5495.5 of this chapter shall be~~
21 ~~subject to the requirements of Section 5497~~
22 ~~notwithstanding the provisions of Section 5495.5.~~
23 ~~Regardless of the provisions of subdivision (b) of Section~~
24 ~~5494 displays shall be entitled, before abatement may be~~
25 ~~mandated, to an amortization term of at least 15 years~~
26 ~~from the date of annexation.~~

27 ~~SEC. 16.—~~

28 *5497.6. Displays required to be removed pursuant to*
29 *Section 5495.5 shall be subject to the requirements of*
30 *Section 5497. Wherever amortization is permitted to be*
31 *utilized for abatement of on-premise business signs*
32 *except as provided by Section 5497, no amortization shall*
33 *be less than 15 years from the date any ordinance*
34 *becomes actually enforceable, unless otherwise provided*
35 *in this section. For purpose of amortization only, and not*
36 *for determining the value or utility of an on-premise*
37 *business sign, every sign is deemed to have a useful life of*
38 *not less than 15 years. If a city or county adopts or seeks*
39 *to enforce an existing ordinance or amendment that has*
40 *provided less than 15 years for conformance, abatement*

1 shall require compliance with Section 5497. All annexed
2 lands that include on premise business signs or displays
3 are, if removal of the signs is required by local law
4 regardless of the availability of amortization, subject to
5 the requirements of Section 5497.

6 SEC. 18. Section 5498.2 of the Business and
7 Professions Code is repealed.

8 ~~5498.2. (a) During the amortization period for a~~
9 ~~nonconforming legally in place on premises advertising~~
10 ~~display's continued use, a city or county may not deny,~~
11 ~~refuse to issue, or condition the issuance of a permit for~~
12 ~~modification or alteration to the display upon change of~~
13 ~~ownership of any existing business if the modification or~~
14 ~~alteration does not include a structural change in the~~
15 ~~display.~~

16 ~~(b) Subdivision (a) of this section does not apply to any~~
17 ~~ordinance introduced or adopted prior to March 12, 1983,~~
18 ~~or adopted pursuant to subdivision (j) of Section 5497, if~~
19 ~~the ordinance contains no specific amortization schedule,~~
20 ~~but instead requires conformity upon change of~~
21 ~~ownership.~~

22 SEC. 19. Section 5498.2 is added to the Business and
23 Professions Code, to read:

24 5498.2. (a) No city or county shall refuse to issue,
25 deny issuance, impose, carry over, or issue upon any
26 condition whatsoever any permit for modification or
27 alteration to any existing or in-place on-premise business
28 display or sign previously lawfully constructed and
29 erected, upon the change of ownership of the display or
30 signs; sale of the business or location where, at, or for
31 whom the display or sign has previously been used; or
32 upon a change of name, sign, color, logo, change of form
33 or design, identity or ownership of any new or existing
34 business, at the same location, provided that the
35 modification or alteration of the existing display or
36 signage does not include a material structural change to
37 the display or sign.

38 (b) No city or county shall condition the issuance of a
39 building permit for the construction, reconstruction,
40 remodeling, or repair of any new or previously existing

1 *building or improvement, upon the requirement that any*
2 *existing, in-place, on-premise business display or sign*
3 *previously lawfully constructed or erected is required to*
4 *conform to that city or county's current sign ordinance or*
5 *regulation.*

6 *(c) This section applies to all cities or counties,*
7 *whether charter or general law.*

8 *SEC. 20. Section 5499 of the Business and Professions*
9 *Code is repealed.*

10 ~~5499. Regardless of any other provision of this chapter~~
11 ~~or other law, no city or county shall require the removal~~
12 ~~of any on-premises advertising display on the basis of its~~
13 ~~height or size by requiring conformance with any~~
14 ~~ordinance or regulation introduced or adopted on or after~~
15 ~~March 12, 1983, if special topographic circumstances~~
16 ~~would result in a material impairment of visibility of the~~
17 ~~display or the owner's or user's ability to adequately and~~
18 ~~effectively continue to communicate with the public~~
19 ~~through the use of the display. Under these~~
20 ~~circumstances, the owner or user may maintain the~~
21 ~~advertising display at the business premises and at a~~
22 ~~location necessary for continued public visibility at the~~
23 ~~height or size at which the display was previously erected~~
24 ~~and, in doing so, the owner or user is in conformance.~~

25 *SEC. 21. Section 5499 is added to the Business and*
26 *Professions Code, to read:*

27 *5499. (a) Notwithstanding any other provision of*
28 *law, no city or county shall require the removal or*
29 *modification of any existing on-premise business*
30 *advertising sign or display on the basis of its height, size,*
31 *form, type, classification, lighting, location, color, or other*
32 *condition, by requiring conformance with any ordinance,*
33 *policy, regulation, or law where topographic condition or*
34 *circumstance would cause or result upon compliance*
35 *with any ordinance, policy, regulation, or law, in a*
36 *material impairment of viewability, noticeability,*
37 *readability, or effectiveness of the display or sign, or result*
38 *in the owner's or user's inability to adequately,*
39 *effectively, or noticeably continue to communicate with*
40 *the motoring or general public through the use of a*

1 *display or sign. Under these circumstances, the owner or*
 2 *user may maintain and continue to use its existing*
 3 *advertising sign or display at its business premises, at the*
 4 *height, size, form, type, classification, lighting, color,*
 5 *location, or other condition at which the display or sign*
 6 *was previously erected or used, and in so doing, the*
 7 *display, sign, owner, and user is deemed to be in*
 8 *conformance with all applicable ordinances, policies,*
 9 *regulations, and laws.*

10 *(b) For purposes of this section, “topographic*
 11 *condition or circumstance” includes, but is not limited to,*
 12 *created objects, improvements, buildings, billboards,*
 13 *other signs or displays, streets, highways, or freeways; all*
 14 *street, highway, or freeway berms; all snow conditions;*
 15 *debris, slide, or mud conditions; fencing; soundwalls or*
 16 *barriers; natural or artificial surface conditions or*
 17 *contours; overpasses; utility poles and wires; trees,*
 18 *vegetation, and landscaping; any material visual*
 19 *impediment or interruption; and natural topography.*

20 *(c) This section applies to all counties and cities,*
 21 *whether charter or general law.*

22 *SEC. 22.* Notwithstanding Section 17610 of the
 23 Government Code, if the Commission on State Mandates
 24 determines that this act contains costs mandated by the
 25 state, reimbursement to local agencies and school
 26 districts for those costs shall be made pursuant to Part 7
 27 (commencing with Section 17500) of Division 4 of Title
 28 2 of the Government Code. If the statewide cost of the
 29 claim for reimbursement does not exceed one million
 30 dollars (\$1,000,000), reimbursement shall be made from
 31 the State Mandates Claims Fund.

32 Notwithstanding Section 17580 of the Government
 33 Code, unless otherwise specified, the provisions of this act
 34 shall become operative on the same date that the act
 35 takes effect pursuant to the California Constitution.